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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NORTHERN DIVISION

INTELLECTUAL VENTURES I LLC, 1680156 MISC Case No. 1680156 MISC

Plaintiff,

V.

AT&T CORP. (d/b/a AT&T ADVANCED SOLUTIONS, d/b/a SBC ADVANCED SOLUTIONS); AT&T COMMUNICATIONS OF TEXAS, LLC; AT&T OPERATIONS, INC.; AT&T SERVICES, INC.; AT&T VIDEO SERVICES, INC.; SBC INTERNET SERVICES, INC. (d/b/a PACIFIC BELL INTERNET SERVICES); and SOUTHWESTERN BELL TELEPHONE CO.,

Defendants.

[Action Pending in the United States District Court for the Western District of Texas, C.A. No. 1:13-cv-116-LY]

**NON-PARTY MARCOS TZANNES'S
NOTICE OF MOTION AND MOTION TO
QUASH DEPOSITION SUBPOENA; AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Case No. NON-PARTY MARCOS TZANNES'S NOTICE OF MOTION AND MOTION TO QUASH DEPOSITION SUBPOENA; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, as soon as counsel may be heard before the assigned
3 judge at the assigned time in the assigned department, Non-Party Marcos Tzannes, an individual
4 and resident of Petaluma, California, will and hereby does move, pursuant to Rule 45(d)(1) of the
5 Federal Rules of Civil Procedure, for an order (1) quashing a subpoena for deposition served by
6 AT&T Corp. and other related entities (collectively, "AT&T") or (2), in the alternative, requiring
7 AT&T to reimburse Mr. Tzannes for lost earnings associated with attending the deposition.

8 This motion is based on this Notice, the Memorandum of Points and Authorities, the
9 Declarations of Peter McAndrews and Marcos Tzannes, submitted concurrently herewith, and
10 any matters this Court may or must judicially notice.

11 Mr. Tzannes is a third-party to the underlying litigation, is not associated with any party
12 to the litigation, and has no interest in the outcome of the case. Attending the deposition will
13 impose an undue burden on Mr. Tzannes because it will take him away from a day of work for
14 which he will lose substantial earnings. Mr. Tzannes requested that AT&T compensate him for
15 lost earnings but AT&T refused. Accordingly, Mr. Tzannes respectfully requests, pursuant to
16 Fed. R. Civ. P. 45(d)(1) and (3), that the Court quash the subpoena for deposition, or order
17 AT&T to reimburse Mr. Tzannes for lost earnings in the amount of \$3,600 and for his reasonable
18 attorneys' fees incurred in bringing this motion.

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1 **I. INTRODUCTION**

2 Marcos Tzannes, an individual and resident of Petaluma, California, hereby moves for an
3 order (1) quashing a subpoena for deposition served by AT&T or (2), in the alternative, requiring
4 AT&T to reimburse Mr. Tzannes for lost earnings associated with attending the deposition. Mr.
5 Tzannes is a third-party to the underlying litigation, is not associated with any party to the
6 litigation, and has no interest in the outcome of the case. Attending the deposition will impose
7 an undue burden on Mr. Tzannes because it will take him away from a day of work for which he
8 will lose substantial earnings. Mr. Tzannes requested that AT&T compensate him for lost
9 earnings but AT&T refused. Accordingly, Mr. Tzannes respectfully requests that the Court
10 quash the subpoena for deposition or order, pursuant to Fed. R. Civ. P 45(d)(1), AT&T to
11 reimburse him for lost earnings in the amount of \$3,600.

12 **II. BACKGROUND**

13 The underlying case, *Intellectual Ventures II LLC v. AT&T Corp., et al.*, 1:13-cv-116-LY
14 (W.D. Tex.), is a patent infringement lawsuit. Mr. Tzannes is a named inventor on several
15 patents asserted in that case. Declaration of Marcos Tzannes ("Tzannes Decl."), ¶ 2. The
16 inventions sprung from Mr. Tzannes work as an engineer for Aware, Inc., a Boston-area
17 technology company, in approximately the 1995-2002 timeframe. *Id.*, ¶ 3. Mr. Tzannes has not
18 worked for Aware since 2012. *Id.* Mr. Tzannes does not have any interest in the outcome of the
19 underlying litigation. *Id.*, ¶ 4. He does not work for Intellectual Ventures in any capacity, nor
20 does he own any interest in Intellectual Ventures, the asserted patents, or the outcome of that
21 case. *Id.*

22 Mr. Tzannes's sole source of income is for his work as a consultant. *Id.*, ¶ 5. His clients
23 rely on him for his significant expertise in telecommunications systems. He has a B.S. in
24 Electrical Engineering from the University of Central Florida and an M.S. in Electrical
25 Engineering from the University of California, Berkeley where he received a National Science
26 Foundation Graduate Fellowship. *Id.*, ¶ 6. He has served as Chairman/Editor of twelve
27 international standards ratified by the ITU (International Telecommunication Union), IEEE

1 (Institute of Electrical and Electronics Engineers), and ATIS (Alliance for Telecommunications
 2 Industry Solutions). *Id.* He is an inventor on hundreds of U.S. and foreign patents and
 3 applications. *Id.* Given his vast experience and substantial expertise, Mr. Tzannes has a
 4 standard hourly rate of \$450. *Id.*, ¶ 5.

5 Mr. Tzannes's consulting workload is currently busy. *Id.*, ¶ 7. He performs the majority
 6 of his work from his home office. *Id.* He does not work for a company as other individuals
 7 might that would allow a paid personal day for attending a deposition. *Id.*, ¶ 8. Thus, taking a
 8 day to attend a deposition in San Francisco, with an hour commute on both ends of the day, will
 9 cost Mr. Tzannes at least eight hours or \$3,600 in lost earnings. *Id.*

10 The AT&T parties are subsidiaries of AT&T, Inc., a massive international corporation
 11 worth more than \$260,000,000,000. See Declaration of Peter J. McAndrews ("McAndrews
 12 Decl."), Ex. E (<http://finance.yahoo.com/quote/T/key-statistics>) (last accessed on July 19, 2016).
 13 They have hired a team of lawyers to represent them as accused infringers in the underlying
 14 action.

15 As part of its litigation strategy, AT&T sought discovery from Mr. Tzannes. On May 12,
 16 2016, AT&T's counsel sent to Mr. Tzannes by email a document entitled AT&T's Notice of
 17 Subpoena to Marcos Tzannes. Tzannes Decl., ¶ 9 and Ex. A. This document purported to
 18 attach as an exhibit a "subpoena to testify at a deposition and to produce documents." Tzannes
 19 Decl., Ex. A. at 1. But the exhibit was not a subpoena; rather, it comprised only requests for
 20 production of documents. *Id.* It did not include a return date for the documents or a date or
 21 location for the deposition. *Id.* And, notably, it did not include the federal subpoena form (e.g.,
 22 AO 88A) advising of Mr. Tzannes's rights, nor did it include any payment for fees and mileage
 23 as required by Fed. R. Civ. P. 45(b)(1). See Tzannes Decl., ¶ 10 and Ex. A.

24 After being advised by Mr. Tzannes's attorney that the May 12, 2016 document was
 25 deficient, AT&T served a subpoena on May 18, 2016. McAndrews Decl., Ex. A. While a
 26 subpoena form was included (albeit, an outdated version of Form AO 88A), the required
 27 payment for fees and mileage was not included. *Id.* On June 8, 2016, Mr. Tzannes served

1 objections on AT&T, including objections that the time and date of the deposition imposed an
 2 undue burden on Mr. Tzannes and an “undue expense because it does not provide for
 3 reimbursement of Mr. Tzannes’s expenses incurred in responding to the subpoena and appearing
 4 for his deposition.” *Id.*

5 The parties negotiated to identify a date for the deposition. *Id.*, ¶ 5 and Ex. C (email
 6 chain). During that process AT&T never addressed Mr. Tzannes’s objections regarding the
 7 undue burden and expense place on him. *Id.*, Ex. C. Before a date was confirmed, Mr. Tzannes,
 8 through his attorney, requested that he be reimbursed for a day of lost earnings. *Id.* On July 15,
 9 2016, AT&T ultimately confirmed that it wanted to proceed with the deposition on July 20, 2016
 10 (*Id.*) and simultaneously served a second subpoena on Mr. Tzannes. *Id.*, Ex. D. Again, the
 11 required payment for fees and mileage was not included. AT&T also refused Mr. Tzannes
 12 request for reimbursement for a day of lost earnings. *Id.*, Ex. C.

13 Counsel for Mr. Tzannes and counsel for AT&T met and conferred by phone on July 18,
 14 2016, but could not reach a compromise to resolve this dispute. McAndrews Decl., ¶ 7.

15 **III. ARGUMENT**

16 Rule 45 of the Federal Rule of Civil Procedure provides significant protections to persons
 17 subject to a subpoena. Fed R. Civ. P. 45(d)(1) provides:

18 (d) Protecting a Person Subject to a Subpoena; Enforcement.

19 (1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney
 20 responsible for issuing and serving a subpoena must take reasonable steps to
 21 avoid imposing undue burden or expense on a person subject to the subpoena. The
 22 court for the district where compliance is required must enforce this duty and
 23 impose an appropriate sanction--which may include lost earnings and reasonable
 24 attorney’s fees--on a party or attorney who fails to comply.

25 Thus, when a party imposes an undue burden or expense on a person subject to the
 26 subpoena, the court must impose an appropriate sanction, which may include lost earnings and
 27 reasonable attorney’s fees. *Id.* By refusing to reimburse Mr. Tzannes for lost earnings, AT&T’s
 28 subpoena for deposition imposes an undue burden and expense.

29 Reimbursing Mr. Tzannes for a day of work that he will miss to attend the deposition is

1 reasonable and fair given that Mr. Tzannes has no financial interest in the underlying litigation
 2 and AT&T is in a much better position to absorb this cost given its large size and financial might
 3 when compared to Mr. Tzannes. Further, as a non-party to the underlying litigation, Mr.
 4 Tzannes deserves special protection from a financial burden. See, e.g., *Kim v. NuVasive, Inc.*,
 5 No. 11cv1370-DMS (NLS), 2011 U.S. Dist. LEXIS 96878, at *6 (S.D. Cal. Aug. 29, 2011)
 6 (stating that the Ninth Circuit “does not favor unnecessarily burdening nonparties with discovery
 7 requests,” and, as a result, “[n]on-parties deserve extra protection from the courts.”) (citing *High
 8 Tech Med. Instrumentation, Inc. v. New Image Indus., Inc.*, 161 F.R.D. 86, 88 (N.D. Cal. 1995)).

9 Accordingly, Mr. Tzannes respectfully requests, pursuant to Fed. R. Civ. P. 45(d)(1) and
 10 (3), that the Court quash AT&T’s subpoena for deposition, or in the alternative, order AT&T to
 11 reimburse Mr. Tzannes for lost earnings in the amount of \$3,600 and for his reasonable
 12 attorneys’ fees incurred in bringing this motion.

13
 14 Dated: July 19, 2016

SHARTSIS FRIESE LLP

15 By: 
 16 JOSEPH V. MAUCH

17 Local Counsel for Marcos Tzannes

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